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FEDERAL ELECTION COMMISSION

William D. White, et al.
petitioner,

AO

REQUEST FOR ADVISORY OPINION BY WILLIAM D. WHITE

William D. White brings this request for an Advisory Opinion a representative of the class that includes registered electors the Commonwealth of Pennsylvania, and those who support his candidacy for the United States Senate.

I am asking the Federal Election Commission for an Advisory Opinion, pursuant to 2 USCS §437f(a), determining if I am a legally qualified candidate for the United States Senate within the meaning of 2 USCS §431(2).

Further, I am also asking for an Advisory Opinion as to whether or not this determination by the Federal Election Commission supercedes any similar determination by any other State or Federal Agency, and if these other agencies are legally bound by the determination of the FEC on this matter.

In support of my claim that I am indeed a candidate for the United States Senate, I make the following statements of fact:

1. I publicly announced my candidacy for the United States Senate election to be held November of 1994, and KQV radio station in Pittsburgh, Pa. broadcast news reports of my candidacy, on November 5, 1993.
2. I filed a Statement of Candidacy and a Statement of Organization with the Secretary of the Senate on or about December 15, 1993, as custodian for the Federal Election Commission.
3. I filed copies of the aforementioned statements with the Secretary of the Commonwealth of Pennsylvania and the Commissioner of Elections.
4. As I am declared and registered as Independent (no party affiliation), I requested the Commissioner of Elections to forward all appropriate information and documentation to me, including the official 'Nomination Paper' forms with which I am to gather nominating signatures of qualified electors.
5. I requested the Commissioner of Elections, pursuant to the provisions of 42 USC §1973ee et. seq., to place large type copies of my Nomination Papers in all registration and polling places, and to forward a supply of these large type forms to me.
6. I will circulate Nomination Paper forms as soon as allowed under Pennsylvania election law (believed to be March 2, 1994).
6. I am a natural born citizen of the United States.
7. I am a resident of, and qualified elector in, the Commonwealth of Pennsylvania, for more than one year.
8. I am 37 years of age, having been born in Pittsburgh, Pa. in 1956.
9. I have no legal disability to hold the office of United States Senator.

To the best of my knowledge and ability, I believe that I have fulfilled all legal requirements and qualifications to seek nomination and election to the United States Senate from the State of Pennsylvania.

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As the period of time to circulate my Nomination Papers commences March 2, 1994, and this circulation of Nomination Papers is equivalent to the primary election held for Party affiliated candidates in Pennsylvania, the Federal Election Commission should regard this request as having been received within 60 days of an election, and make its determination within 20 days of the receipt of this request. I urge the Commission to make its determination on this matter immediately upon receipt of this request.

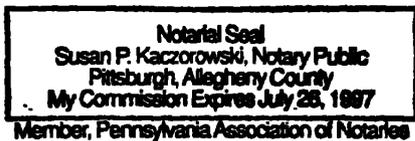
I swear that the foregoing is true and correct to the best of my knowledge, and the statements I have made are subject to the penalties for perjury and the provisions of 18 USC §1001.

William D. White

William D. White
March 2, 1994
16 E. Manilla Ave.
Pittsburgh, Pa. 15220

Subscribed and sworn to before me on this 2nd day of March, 1994.

Susan P. Kaczorowski





FEDERAL ELECTION COMMISSION

WASHINGTON, DC 20463

March 10, 1994

William D. White
16 E. Manilla Avenue
Pittsburgh, PA 15220

Dear Mr. White:

This responds to your letter dated March 2, 1994, which requests an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your status as a candidate for the United States Senate in Pennsylvania in the 1994 election cycle.

You state that you have publicly announced your U.S. Senate candidacy and have filed a Statement of Candidacy and a Statement of Organization for your principal campaign committee pursuant to the Act. You further explain that you will be seeking office as an independent (no political party affiliation) in the November 1994 general election. You expect to obtain ballot access in the general election by collecting the signatures of qualified electors on nominating petition forms prepared by Pennsylvania election officials. Although you have requested state officials to give you these forms, you indicate that you have not yet received them. You also say that you meet all requirements of the United States Constitution which pertain to the office of U. S. Senator.

You request an advisory opinion that determines your qualifications as a "legally qualified candidate" for the United States Senate. You also ask whether an opinion to this effect "supercedes any similar determination by any other State or Federal Agency, and if these other agencies are legally bound by the determination of the FEC on this matter."

Based on this office's review of your inquiry, it appears that your questions are answered directly by the Act or Commission regulations and, in some respects, are not within the Commission's jurisdiction to issue an advisory opinion. Because legal interpretations are not needed as to the questions you pose that are within the Commission's jurisdiction, it follows that an advisory opinion is also unnecessary.

For your information and guidance, please note the following comments and citations.

You are required to file as a Senate candidate with the Commission when your financial activity to influence your nomination or election exceeds \$5,000 in either contributions received or expenditures made. Financial activity would include amounts you spend from your personal funds (before you receive any contribution from any other person) to qualify as a candidate under the State ballot petition procedure. No later than 15 days after you become a Federal candidate, that is once your campaign expenses exceed \$5,000 (or when any contributions you accept from others in combination with any campaign expenses paid from your personal funds exceed \$5,000), you must file the requisite FEC Forms. You indicate that you have already done so, even though (as you stated in a telephone conversation with me on March 4, 1994) your campaign contributions or expenditures have not exceeded \$5,000. 2 U.S.C. §431(2).

Commission regulations explain that individuals who are not required to file as candidates under the Act may voluntarily register and report, but such a person does not become candidate solely by voluntarily filing a report. 11 CFR 104.1(b). See 11 CFR 100.3. Copies of these regulations are enclosed for your further review.

As these provisions indicate, the Commission does not make any determination that one is a "legally qualified candidate" for Federal office. However, any individual who becomes a Federal candidate by virtue of the financial activity described in the Act or Commission regulations is required to file and otherwise comply with all applicable provisions of law.

Note also, the fact that one is a candidate under the Act does not determine his or her qualifications for the election ballot in any State. Ballot access requirements are governed by State law, assuming such law comports with the requirements of the United States Constitution as interpreted and applied by the U. S. Supreme Court and other lower Federal courts. See also Commission regulations providing that state laws, which prescribe the manner of qualifying as a candidate, are not preempted or superseded by the Act or Commission regulations. 11 CFR 108.7(c)(1).

You may also wish to review relevant provisions of the Communications Act that impose various duties on broadcast stations with respect to their giving access to "a legally qualified candidate for Federal elective office," and in some cases give "equal opportunities" to such a candidate for any public office. 47 U.S.C. §§312, 315. These provisions are subject to the rulings and regulations of the Federal Communications Commission, not this Commission.

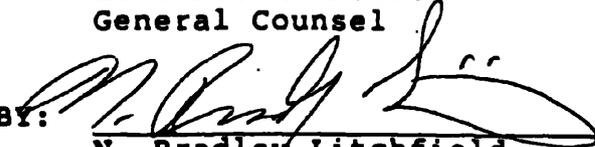
Letter to William D. White
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If you have any questions about this letter, or the advisory opinion process, please contact Mr. Litchfield.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


N. Bradley Litchfield
Associate General Counsel

Enclosure
Regulations cited

N. Bradley Litchfield
Associate General Counsel
Federal Election Commission
999 E Street NW
Washington, D.C. 20463

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AOR 1994-05

March 12, 1994

Dear Mr. Litchfield,

Your response to my request for an Advisory Opinion is neither appropriate or adequate.

Pursuant to 2 USCS §437f(a)(1), the Commission "...shall render a written advisory opinion...". Your assertion that an advisory opinion is "unnecessary" is not an appropriate response to a proper request for an advisory opinion. An advisory opinion is necessary because it has been requested and the Commission is required to respond to the request with an opinion.

You also mis-interpreted the basic question asked - "I am asking the Federal Election Commission for an Advisory Opinion, pursuant to 2 USCS §437f(a), determining if I am a legally qualified candidate for the United States Senate within the meaning of 2 USCS §431(2)." I did not ask for a ruling by the Commission as to whether or not I comply with State law in this matter, that is not within your jurisdiction. I provided all relevant information, including the actions I had taken under State law to qualify for election, in this case actions taken seeking nomination.

Your response is inadequate because, although you dissemble for two pages, you never answer the question as to whether or not I am a candidate within the meaning of 2 USCS §431(2). You do indicate that filing under FECA, of itself, is not sufficient to become a candidate, that is why I listed the other qualifications and actions taken in the matter of establishing my candidacy. If the Commission determines that I am not a candidates within the meaning of 23 USCS §431(2), then the Commission must state specifically what action or qualification I am deficient in.

The questions I raised pertaining to the precedence of the Commission's Advisory Opinion was meant to establish that the Commission's interpretation of FECA would take precedence over any State or other Federal agency interpretation of FECA. Although that is how I interpret FECA, your letter seems to indicate that this is not the case. An Advisory Opinion is necessary on this matter as well.

Sincerely,

William D. White

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